

STATE OF GEORGIA COUNTY OF FULTON CITY OF SOUTH FULTON

ORDINANCE No. 2017-008

ADOPTION OF BUSINESS AND OCCUPATION TAXATION ORDINANCE

WHEREAS, the City of South Fulton ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia;

WHEREAS, the City Council is authorized by O.C.G.A. § 36-35-3 to adopt ordinances relating to its property, affairs, and local government;

WHEREAS, the duly elected governing authority of the City is the Mayor and City Council;

WHEREAS, Section 1.12(b)(41) of the City Charter authorizes the City Council to impose all other taxes that may be allowed by law;

WHEREAS, Chapter 13 of Title 48 of the Official Code of Georgia Annotated authorizes municipalities to impose business occupation taxes and fees;

WHEREAS, the City requires revenue to operate and provide municipal services to City residents;

THE COUNCIL OF THE CITY OF SOUTH FULTON HEREBY ORDAINS
as follows:

CHAPTER 5 – BUSINESS AND OCCUPATION TAXES (Reserved)

Sec. 2-5001. – Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *Administrative fee* means a component of an occupation tax that approximates the reasonable cost of handling and processing the occupation tax. *Employee* means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for purposes of documenting compensation a form W-2, but not a form I.R.S. 1099. An individual who performs work under the direction and supervision of one business or practitioner in accordance with the terms of a contract or

agreement with another business that recruits such individual is an employee of the business or practitioner that issues to such individual for purposes of documenting compensation a form I.R.S. W-2.

(b) *Gross receipts.*

- (1) The term “*gross receipts*” means total revenue of the business or practitioner for the period, including, without being limited to, the following:
 - (A) Total income without deduction for the cost of goods sold or expenses incurred;
 - (B) Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;
 - (C) Proceeds from commissions on the sale of property, goods, or services;
 - (D) Proceeds from fees charged for services rendered; and
 - (E) Proceeds from rent, interest, royalty, or dividend income.
- (2) The term “*gross receipts*” shall not include the following:
 - (A) Sales, use, or excise taxes;
 - (B) Sales returns, allowances, and discounts;
 - (C) Interorganizational sales or transfers between or among the units of a parent-subsidary controlled group of corporations, as defined by 26 USC 1563(a)(1), between or among the units of a brother-sister controlled group of corporations, as defined by 26 USC 1563(a)(2), between or among a parent corporation, wholly owned subsidiaries of such parent corporation, and any corporation in which such parent corporation or one or more of its wholly owned subsidiaries owns stock possessing at least 30 percent of the total value of shares of all classes of stock of such partially owned corporation, or between or among wholly owned partnerships or other wholly owned entities;
 - (D) Payments made to a subcontractor or an independent agent for services that contributed to the gross receipts in issue;

- (E) Governmental and foundation grants, charitable contributions or the interest income derived from such funds, received by a nonprofit organization which employs salaried practitioners otherwise covered by this article, if such funds constitute 80 percent or more of the organization's receipts; and
 - (F) Proceeds from sales of goods or services that are delivered to or received by customers who are outside the state at the time of delivery or receipt.
- (c) *License* means a permit or certificate issued by the city that allows an entity to operate lawfully in the city. A license does not create any rights to operate in violation of any provision of this Code, and it may be revoked by the city council at any time. This definition applies to any license issued pursuant to this chapter.
- (d) *Location or office* includes any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office. The renter's or lessee's location that is the site of personal property that is rented or leased from another does not constitute a location or office for the personal property's owner, lessor, or the agent of the owner or lessor. The site of real property which is rented or leased to another does not constitute a location or office for the real property's owner, lessor, or the agent of the owner or lessor unless the real property's owner, lessor, or the agent of the owner or lessor, in addition to showing the property to prospective lessees or tenants and performing maintenance or repair of the property, otherwise conducts the business of renting or leasing the real property at such site or otherwise conducts any other business, profession, or occupation at such site.
- (e) *Occupation tax* means a tax levied on persons, partnerships, corporations, or other entities for engaging in an occupation, profession, or business.
- (f) *Practitioner of professions and occupants* shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.
- (g) *Regulatory fees* means payments, whether designated as license fees, permit fees, or by another name, which are required by city as an exercise of its municipal power and as a part of or as an aid to regulation of an occupation, profession, or business. The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the city. A regulatory fee does not include an administrative or registration fee.. Regulatory fees do not include development impact fees as defined by

O.C.G.A. § 36-71-2(8) or other costs or conditions of zoning or land development.

Sec. 2-5002. – Occupation Certificate Required

(a) All persons, firms, companies, or corporations, including limited liability companies and professional corporations, now or hereafter operating a business in the city, are hereby required to register their business or office, obtain an occupation tax certificate for their business or office, and pay the amount now or hereafter fixed as taxes and fees thereon. The owners of multifamily rental dwellings or multifamily rental units within the City that receive income for use of four or more such dwellings or units and meet the requirements of O.C.G.A. § 48-13-5 for having a location or office within the City are subject to an occupation tax as provided in this chapter. For the initial year of construction, this section shall not apply to new construction or rehabilitation of a multifamily rental dwelling provided proper permits are obtained from the city.

(b) The occupation tax certificate shall serve as a business license. Additional business licenses may be required as established in this chapter.

(c) Stock or manufacturing companies or other companies, subsidiaries, agencies, district offices, branch offices, corporations or individuals, having either their business proper or their general branch offices located within the city, and either represented by the officers of the company, or any agent, for the purpose of soliciting patronage for the same, or for the transaction of any business pertaining thereto, is required to obtain an occupation tax certificate.

(d) All licenses granted under this article shall expire on April 1 of each year. Licensees are required to make a new application in each year. Such application is treated as an initial application and the applicant is required to comply with all rules and regulations for the granting of licenses as if no previous license had been held.

Sec. 2-5003. – Fee, Basis.

(a) Except as otherwise provided in this article, every business and practitioner subject to this article shall pay a tax based on the gross receipts of such business (the "occupation tax").

(b) The gross receipts tax shall include a flat rate of \$50.00 for the first \$20,000.00 of gross revenue, and \$13.00 per employee. Gross revenues above \$20,000.00 are taxed using a fee class table based on profitability. The fee class table ranges from \$0.50 to \$2.20 per \$1,000.00 of gross revenue based on the NAICS Code of the business.

Sec. 2-5004. – Application for Certificate

(a) It shall be the duty of each person, firm or corporation subject to this article to file with the department of finance on or before March 31 of each calendar year an application for registration under this article setting forth all activities of each business, its Standard Industrial Classification Code and/or its North American Industry Classification System Code, its estimated gross receipts for the calendar year of the registration, computation of the amount of tax due including the administrative fee and per employee tax, a copy of the profit and loss statement, a copy of its Georgia Income Tax Return, and such other information as may be required by the director of finance to properly administer this chapter, which may include all or any of the information specified in this chapter. Any new business or practitioner shall apply and register for a new certificate within 30 days after the commencement of business.

(b) For businesses or practitioners with more than one type of service or product, including businesses or practitioners listed under and subject to O.C.G.A. § 48-13-16, the entire gross receipts shall be classified according to the dominant service or product based upon the information provided under subsection (a) hereof.

(c) For each business or practitioner with a location or office situated in more than one jurisdiction, including businesses or practitioners with one or more locations or offices in Georgia and one or more locations outside the state, the City shall allocate the gross receipts as follows for occupation tax purposes in accordance with the following:

- (1) Where the business or practitioner can reasonably allocate the dollar amount of gross receipts of the business or practitioner to one or more of the locations or offices on the basis of product manufactured in that location or office or the sales or other services provided in that location or office, the county shall tax the gross receipts generated by the location or office within the City; or
- (2) Where the business or practitioner cannot reasonably allocate the dollar amount of gross receipts among multiple locations or offices, the business or practitioner shall divide the gross receipts reported to all local governments in this state by the number of locations or offices of the business or practitioner which contributed to the gross receipts reported to any local government in this state, and shall allocate an equal percentage of such gross receipts of the business or practitioner to each location or office.
- (3) In no instance shall the sum of the portions of the total gross receipts of a business or practitioner taxed by all local governments exceed 100 percent of the total gross receipts of the business or practitioner.

- (4) In the event of a dispute between the business or practitioner and the county as to the allocation under this section, the business or practitioner shall have the burden of proof as to the reasonableness of the allocation.
 - (5) Upon request, businesses or practitioners with a location or office situated in more than one jurisdiction shall provide to the City the following:
 - (A) Financial information necessary to allocate the gross receipts of the business or practitioner; and
 - (B) Information relating to the allocation of the business's or practitioner's gross receipts by other local governments.
 - (6) When the City levies an occupation tax on a business or practitioner which has locations encompassed by other jurisdictions and the other jurisdictions use different criteria for taxation, the county shall not tax any greater proportion of the gross receipts than authorized by law.
- (d) This chapter applies to each business and practitioner with no location or office within the State of Georgia, which:
- (1) Has one or more employees or agents who exert substantial efforts within the unincorporated part of the county for the purpose of soliciting business or serving customers or clients; or
 - (2) Owns personal or real property which generates income and which is located in the unincorporated part of the county. Gross receipts of such business or practitioner for purposes of this section shall include only those gross receipts reasonably attributable to sales or services in the State of Georgia. If such business or practitioner provides to the director of finance proof of payment of a local business or occupation tax in another state which purports to tax the business's or practitioner's sales or services in the State of Georgia, the business or practitioner shall be exempt from this article.
- (e) Real estate brokers transacting business within the unincorporated area of the county are subject to this article. Real estate brokers shall be liable for tax only on gross receipts arising from transactions involving real estate located within the City. Real estate brokers shall be liable for such taxes without regard to their having a location or office in the county.
- (f) The provisions of this section may be amended from time to time by resolution of the board of commissioners for the purpose of providing for exceptions to business and occupation taxes as provided under O.C.G.A. § 48-13-10(f).

Sec. 2-5006. – Payment of Fees, Penalties, Refunds.

- (a) Following the filing of the application as provided for in Section 2-5005 of this chapter, each business or professional practitioner subject to this article shall remit payment in full for all taxes and fees due not later than March 31 of the year in which the application is filed. Each person, firm or corporation operating under various trade names must secure a separate occupation tax certificate for each trade name issued. In addition, a separate occupation tax certificate must be secured for each business location. If the business or practice was not in operation on January 1, the occupation tax with its associated administrative fees shall be due and payable 30 days following the commencement of business pursuant to section 18-38.
- (1) The Finance Officer or his designee shall assess penalties in the amount of the percent of the amount owed for each calendar year or portion thereof for:
- (A) Failure to pay occupation taxes and administrative fees when due;
 - (B) Failure to file an application by March 31 of any calendar year, when the business or practitioner was in operation on January 1 or such calendar year; and/or
 - (C) Failure to register and obtain an occupation tax certificate within 30 days of the commencement of a new business.
- (2) Delinquent taxes and fees are subject to interest at a rate of one and one-half percent per month. Payments required by this chapter may be collected in any suit at law or in equity, or the City may cause executions to issue against the person, firm or corporation liable for the payment. Executions may be levied and sold together with all costs thereof, by the City Finance Officer.
- (3) Any person whose duty it is to register any business or practice and obtain any occupation tax certificate required under this article and falls to do so, or who fails to pay the occupation tax or administrative fee required by this chapter, or who makes any deliberate or substantial and material false statement on an application or provides materially false information in support of an application, shall be denied an occupation tax certificate, shall be required to surrender any existing such occupation tax certificate and shall be deemed to have no such occupation tax certificate for purposes hereof, and shall be subject to a civil fine as provided by the law of this state.
- (b) Certificate applicants for trade names and for separate business locations shall pay the nonrefundable administrative fee imposed hereby, in addition to the tax imposed by Section 2-5003 of this chapter. In the event a business ceases to operate after the issuance of an occupation tax certificate, no refund of the fee or tax shall be granted.

- (c) No business or practitioner subject to this article shall collect any gross receipts as defined herein unless such business or practitioner shall have applied for an occupation tax certificate and/or license as required hereunder. Upon application for an occupation tax certificate, any such business or practitioner may thereupon collect gross receipts, including those incurred but not collected during the period prior to the application, but such business or practitioner shall be subject to the penalties of subsection (a) of this section. If the taxes and fees remain unpaid after the due date, the business or practitioner shall not collect any gross receipts as defined herein. The provisions of this ordinance may be enforced by appropriate injunctive or other relief upon the application of the Finance Officer to the Superior Court of Fulton County.
- (d) Practitioners of law may collect gross receipts as defined herein without applying for and obtaining an occupation tax certificate. However, practitioners of law must pay the occupation tax levied herein. Delinquent taxes and fees are subject to interest at a rate of one and one-half percent per month. Any occupation tax with its associated administrative fees hereunder, shall be due and payable by March 31 of each calendar year. If the business or practice was not in operation on January 1, the occupation tax with its associated administrative fees shall be due and payable 30 days following the commencement of business pursuant to this ordinance. The Finance Officer shall assess a penalty in the amount of ten percent of the amount owed for each calendar year or portion thereof for failure to pay occupation taxes and administrative fees when due. In the event of failure to pay the occupation tax required by this chapter, the tax may be collected in any suit at law or in equity. In addition, failure to pay the occupation tax required by this article shall subject the person, firm or corporation to a civil fine as provided by the law of this state.
- (e) Except as provided in subsection (b), the refund of the occupation tax levied herein is governed by O.C.G.A. § 48-5-380.

Sec. 2-5007. - Termination of business.

It shall be the duty of each business and practitioner subject to fees and occupation taxes under this chapter, when it shall cease to do business or practice, to return its current occupation tax certificate, together with a statement as to the date of termination of doing business or practice, to the Finance Officer.

Sec. 2-5008. – Professional occupation tax.

- (a) Notwithstanding any other provision of this chapter, there is hereby imposed upon practitioners of law, medicine, osteopathy, chiropractic, podiatry, dentistry, optometry, applied psychology, veterinary, landscape architecture, land surveying, massage therapy and physiotherapy, public accounting, embalming, funeral

directing, civil, mechanical, hydraulic and electrical engineering, architecture, marriage and family therapists, social workers, and professional counselors, as their entire occupation tax one of the following, at the practitioner's election:

- (1) The occupation tax based on gross receipts resulting from application of the other provisions of this chapter; or
- (2) \$400.00 each year, but a practitioner paying accordingly shall not be required to provide information relating to the gross receipts of such practitioner. For the purposes of this section, a "practitioner" shall include any individual holding license to practice any of the professions specified herein regardless of whether such individual shall practice as a professional corporation or professional association.

(b) In addition to any other documentation that may be requested or required by the City Finance Officer, an practitioner electing to make a payment pursuant to subsection (a)(2) of this ordinance may be required to demonstrate proof of licensure, if applicable.

Sec. 2-5009. - Transfer; suspension; revocation.

- (a) No certificate issued hereunder may be transferred.
- (b) Each certificate granted hereunder shall be subject to suspension or revocation for violation of any rule or regulation of the county now in force or hereafter adopted.
- (c) Whenever the director of City Finance Officer there is cause to suspend or revoke the occupation tax certificate issued hereunder:
 - (1) The Finance Officer must give the certificate holder ten-day written notice of intention to suspend or revoke the occupation tax certificate. The ten-day written notice must include the time, place, and purpose of such hearing, and a statement of the charges upon which such hearing shall be held.
 - (2) A hearing will be scheduled wherein the certificate holder may present a defense to the suspension or revocation before the City Council or its designee. After the hearing, the City Council or its designee may suspend, sanction, or revoke the occupation tax certificate issued hereunder if any of the grounds set forth below exist. An occupation tax certificate may be suspended, sanctioned, or revoked upon one or more of the following grounds:

- (A) The certificate holder is guilty of fraud in the operation of the business or occupation he/she practices, or fraud or deceit in being licensed to practice in that area;
- (B) The certificate holder is engaged in the business or occupation under a false or assumed name, or is impersonating another practitioner of a like or different name;
- (C) The certificate holder is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to such an extent he/she is unable to perform his or her duties under the business or occupation;
- (D) The certificate holder is guilty of fraudulent, false, misleading, or deceptive advertising or practices;
- (E) The certificate holder has been convicted of or has pled guilty or nolo contendere to any sexual offense as set out in Title 16, Chapter 6 of the Official Code of Georgia Annotated, or to any offense involving the lottery, illegal possession or sale of narcotics or alcoholic beverages or possession or receiving of stolen property, for a period of five years immediately prior to the filing of the application. If after having been granted a certificate, the applicant is found not to be of good moral character, or pleads guilty or enters a plea of nolo contendere to any of the above offenses, said certificate shall be subject to suspension and/or revocation;
- (F) The original application or renewal thereof contains materially false information, or the applicant has deliberately sought to falsify information contained therein;
- (G) The establishment is a threat or nuisance to public health, safety or welfare; or
- (H) Any other violation of this article.

(3) After the Finance Director makes a recommendation to the City Council to suspend or revoke an occupation tax certificate issued hereunder, the City Council or its designee shall conduct a hearing to hear evidence relevant to the alleged violation.

(A) At the hearing, the Finance Director or his designee first and presents all evidence and argument in support of the recommendation to suspend or revoke the occupation tax certificate issued hereunder. The Finance Director may be represented by the City Attorney or his or her designee. The certificate holder may be represented by counsel.

(B) After the Finance Director makes his/her presentation, the certificate holder or the certificate holder's legal counsel, will present evidence and argument as to why the occupation tax certificate issued hereunder should not be suspended, sanctioned or revoked.

(C) City Council members will have the right to ask questions at any time during the hearing. If the City Council designates the City Court to hear the matter, the rules of procedure applicable to magistrate courts shall apply.

(D) After hearing all of the evidence and arguments of the parties, the City Council or its designee shall render a decision. The suspension, sanction, or revocation decision is final unless the certificate holder files a petition for writ of certiorari to the Superior Court of Fulton County within 30 days of the date of the decision.

Sec. 2-5010. - Display of Occupation Tax Certificate; Penalties.

The certificate holder is required to display the occupation tax certificate issued hereunder in a conspicuous location. Failure to display the occupation tax certificate in a conspicuous location may result in a fine of \$100.00. This section does not apply to practitioners of law.

Sec. 2-5011. - Proration of fee.

When any person or business commences business on or after July 1 in any year, the occupation tax authorized hereby shall be levied at the customary rate on the gross receipts of the business or practitioner from the commencement of the business, but the attendant administrative fee shall not be reduced.

Section 2: Severability

In the event any portion of this ordinance shall be declared or adjudged invalid or unconstitutional, it is the intention of the City Council of the City of South Fulton, Georgia, that such adjudication shall in no manner affect the other sections, sentences, clauses or

phrases of this ordinance which shall remain in full force and effect, as if the invalid or unconstitutional section, sentence, clause or phrase were not originally a part of the ordinance.

Section 3: Repealer

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Section 4: Effective Date: October 1, 2017

Unless specifically specified elsewhere in this Ordinance, the effective date of this Ordinance shall be January 1, 2018.

The foregoing Ordinance No. **2017-008** was offered by Councilmember **Gilyard**, who moved its approval. The motion was seconded by Councilmember **Willis**, and being put to a vote, the result was as follows:

| | AYE | NAY |
|---|-------------|------------|
| William “Bill” Edwards, Mayor | _____ | _____ |
| Catherine Foster Rowell, Mayor Pro Tem | _____√_____ | _____ |
| Carmalitha Lizandra Gumbs | _____√_____ | _____ |
| Helen Zenobia Willis | _____√_____ | _____ |
| Gertrude Naeema Gilyard | _____√_____ | _____ |
| Rosie Jackson | _____√_____ | _____ |
| khalid kamau | _____√_____ | _____ |
| Mark Baker | _____√_____ | _____ |

THIS ORDINANCE adopted this 27th day of June 2017. **CITY OF SOUTH FULTON, GEORGIA**



WILLIAM "BILL" EDWARDS, MAYOR

ATTEST:



MARK MASSEY, CITY CLERK



APPROVED AS TO FORM:



JOSH BELINFANTE, INTERIM CITY ATTORNEY